

APPENDIX F

PROMPT PAYMENT ACT LETTER OF INSTRUCTION
FOR
VENDOR PAY OFFICESA. General

1. This appendix directs how different kinds of commercial payments are made under the Prompt Payment Act (PPA) and the 1988 amendment to the PPA. These directions are based on the law, OMB A-125, Prompt Payment, the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and this regulation.

2. This appendix is a condensed version of the directives in the above statutes and regulations. Appendix E is a guide in table format. Both of these appendices should be reproduced and given to each vendor pay technician. Serviced activities will provide a copy of this appendices to each outside certifying official as part of the training package for such officials. Courtesy copies should be furnished to contracting officers and receiving activity personnel.

3. The proponent of this guide is the Director, DFAS-IN, ATTN: DFAS-IN/FS, 8899 East 56th Street, Indianapolis, In 46249. The phone numbers are DSN 699-5378/5394/5393/5392 or commercial (317)-510-5378/5394/5393/5392.

B. Prompt Payment Act Rules, Interest Due Vendors

1. Interest due vendors under PPA must be paid. Vendors do not have to ask for interest. If it is owed, pay it. To deliberately not pay interest when payment is due is breaking the law. U.S. Government personnel cannot ask, either directly or through implication, for vendors to waive interest. There are only two ways vendors can waive interest under PPA. They are:

a. Depositing the U.S. Government check into their own account and issue a check back to the U.S. Government in the amount of the interest they were paid. (In the event this happens, deposit the funds back to the account used to pay the interest.); or

b. Returning the U.S. Government check with a letter requesting that a new check be issued without the interest included.

2. Vendors cannot submit a general letter asking that interest never be paid. They must use either the guidance in paragraph 1a or b above for each payment after the payment is made. The U.S. Government cannot ask the vendor to waive interest.

C. Payments Subject to PPA

In general, all payments to private business concerns, individuals outside the U.S. Government who provide goods or services to the U.S. Government, and state and local governments are paid under the provisions of the PPA. Specific exceptions are:

1. Payments to other U.S. Government agencies.
2. Payments made to foreign governments, including quasi-government entities, such as government run railroads or utilities.
3. Financing payments under contracts with financing provisions, other than construction and architect-engineer contracts, which are under PPA.
4. Payments under contracts subject to provisions of status of forces agreements or the laws and/or customs of the host country.
5. Payments to utility companies or other organizations governed by tariffs.
6. Payments directed by adjudicating authorities as settlement of claims.
7. Payments made under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).
8. Payments made to our own people, that is, U.S. Government civil service employees or military personnel.

D. Correct Payment Due Dates

1. There is only one correct payment due date under PPA. Payments made before that due date are early and payments made after that date are late. The goal is to schedule all payments to be made on the correct payment due date. For contracts issued on or before March 31, 1989, payments made within 15 days after the due date do not require interest. For contracts issued on or after April 1, 1989, payments made one or more days after the due date must include interest. Payments made seven or less days before the payment due date are not reported as early payments on the PPA report for contracts issued on or after April 1, 1989 (three days or less on contracts issued on or before March 31, 1989).

2. If the payment due date falls on a weekend or a federal holiday, make the payment on the first business day after the weekend or holiday. The first business day becomes the required payment date. If the required payment date is missed, interest is computed from the day after the "required" date (that is, the first working day after the holiday or weekend). Weekends and holidays are the only times when this rule applies. Acts of God, such as hurricanes or

earthquakes, which make it impossible for the paying office to be open, cannot be used to schedule a new required payment date.

3. If electronic funds transfer (EFT) is used instead of issuing checks, the payment information must reach the vendor's financial institution on the payment due date. The "settlement" date is the same as the payment due date. If payment information will reach the vendor's financial institution after the payment due date, interest must be included.

4. Checks must be post marked and mailed the same date they are issued.

5. Unless otherwise stated, all days mentioned in this guide are calendar days, not work days.

E. The Designated Agency Office

1. The designated agency office is the office designated in the contract to receive invoices. The designated payment office is the Operating Location (OPLOC) or Finance and Accounting Office (FAO) named in the contract to make payments. Most payment period counts start from when the invoice reaches the designated agency office. Vendor pay personnel must always check the procurement document to see who the designated agency office is and not just assume that the payment period count starts when the invoice reaches their office.

2. If the designated agency office does not date stamp or otherwise annotate the invoice with the date it reaches their office, all payment due date are computed from the date the vendor put on the invoice. (Repeat: Only one date is used to compute the due date.) Neither actual nor constructive acceptance is used in this situation. Since many firms issue their invoice at the same time they ship the goods, the date on the invoice may be before goods are delivered. Therefore, it is almost certain interest would be due because payment cannot be made until actual acceptance occurs. Vendor pay personnel date stamp all incoming documents, but they must make sure that designated agency offices outside the vendor pay office understand how important this action is. Any interest which is paid because the designated agency office did not date stamp the invoice is charged to that organization.

F. Discount Payment Periods

1. All discount payment periods are computed from the date on the invoice or terms of the contract whichever allows the greatest advantage to the U.S. Government. The payment due date on discounts is the last day of the discount period. If the payment cannot be made by that date, the payment is rescheduled for 30 days and the discount cannot be taken. If there is no date on the invoice, date of receipt in the designated agency office can be used if the invoice is date stamped in. If the vendor makes a definite offer on the invoice, such as 1% if paid by the 10th of the month, the discount can be taken if the payment is made by the specified date. In this case, the discount period would not be computed from the date of the invoice but in accordance with the vendor's specific offer.

2. If the last day of the discount period falls on a weekend or on a Federal holiday, the discount can be taken if the payment is made on the next business day.

3. Vendor pay personnel are expected to go to extraordinary lengths to take big discounts, but it is not cost-effective to devote special handling time to take smaller discounts. All discounts should be taken if they are cost effective, however, small discounts should not be taken if they require extra effort. Report them as discounts offered but not taken. In addition, discount offers not taken because one or more of the necessary documents (contract, receiving and acceptance report, or invoice) to make payment do not reach the vendor pay office in time to pay on the due date are reported as offered, but not taken due to late receipt of payment documents. This includes any discounts not taken because one or more of the necessary documents do not reach the vendor pay office until after the due date has passed.

G. Constructive Acceptance

1. This concept is used to determine payment due dates if actual acceptance is not performed within seven days and, therefore, when interest starts to accrue. Congress put this concept in the 1988 PPA amendment. It is easier to understand and use if you understand why congress used it.

2. Under the 1982 PPA, due dates were figured from the later of invoice receipt in the proper office or actual acceptance of the goods or services, there were no constraints on how long the U.S. Government could take to accept. A situation developed in which DoD made payments that were technically correct but did not meet congressional intent. For example, if a receiving activity took weeks or months to "accept" goods or services, payment periods started from that date. This resulted in vendors being paid months after delivery or performance, but they were not paid interest. Congress used constructive acceptance to correct this problem.

3. The PPA amendment states that the U.S. Government is not forced to accept goods or services in a specified time and payment cannot be made until that acceptance occurs, but for purposes of determining a payment due date (and, therefore, when interest starts to accrue), acceptance is deemed to occur seven days after delivery or services are completed. (Note: The seven-day constructive acceptance is used for procurement documents awarded on or after April 1, 1989. A five-working-day constructive acceptance period is used on contracts awarded on or before March 31, 1989.)

4. The PPA amendment states that most payment due dates are computed from the later of invoice receipt in the designated agency office or actual or constructive acceptance occurs, whichever is earlier.

5. Two separate receiving dates are used: the date of delivery or completion and the date actual acceptance occurred. Therefore, to compute the correct payment due date, vendor pay personnel must know two dates: a -- the date goods were delivered or services were completed, and b -- the date the receiving activity actually accepted the goods or services as conforming to contract specifications. For example:

a. Goods are delivered on April 9, constructive acceptance is April 16. The receiving activity accepted the goods on April 12. The invoice is received in the designated agency office on April 20. The earlier of actual and constructive acceptance is April 12, so that date is compared to invoice receipt, April 12, versus April 20. The later of these two dates is invoice receipt, April 20. Therefore, day one of the payment period is April 21, and the last day is May 20. The check must be issued on May 20, interest starts to accrue on May 21.

b. Services are completed on June 4, and constructive acceptance is June 11. The receiving activity accepts the services on June 25. The invoice is received in the designated agency office on June 6. The earlier of actual and constructive acceptance is the June 11 constructive date. Therefore, this date compared with invoice receipt, June 11 versus June 6. The later of these two dates is the constructive acceptance date of June 11. Day one of the payment period is June 12, day 30 is July 11. The payment must be made on July 11. Interest starts to accrue on July 12.

c. It's important to realize that payment cannot be made until actual acceptance occurs, but that interest may be accruing if the receiving activity takes too long to officially accept the shipment or service. If interest results in this situation, charge the interest to the receiving activity which caused the interest to be paid by taking too long to accept.

d. If receiving personnel put only one date on a receiving report, vendor pay personnel must assume that is the date of delivery or service completion and use that one date to compute constructive acceptance to determine due date. Contracting officers will resolve any disputes from vendors on whether the due date was correct.

H. Notices to Vendors

All payments which include interest must include the following information:

1. The interest amount being paid shown separately.
2. The rate used to compute the interest and the number of days interest is computed.

I. Interest Rates and Funds

1. The PPA interest rates change each January 1 and July 1. The proponent office issues messages giving the new interest rate.

2. The interest rate in effect on the day after the payment should have been made is used to compute interest. One interest rate is used to compute interest on any one payment, even if the interest period covers different rate periods. (For example, if a payment was due on July 24, 1990 but was not made until February 15, 1991, the interest rate in effect on July 25, is used to compute interest for the whole period, even though the rate changed on January 1.)

3. The rule for what funds to use is different. The FY funds in effect on the dates interest is accrued are used. Therefore, in our example above, FY 90 funds are used to pay interest from July 25 through September 30 and FY 91 funds are used to pay interest from October 1 through the February 15 payment date.

4. Interest due of \$1.00 or less per invoice (not line item or payment voucher) need not be paid.

5. Interest being paid under PPA continues to accrue only for one year (365 days). Interest being paid under some other statute, such as the Contract Disputes Act of 1978, is paid for whatever length of time directed by the adjudicating authority.

J. The Office of Management and Budget (OMB) Penalty

This penalty is paid in addition to any interest owed. It is a penalty assessed because we did not pay interest when we should have. Vendors have to ask for this penalty; we do not voluntarily pay it. The OMB penalty is only due on payments made on or after January 21, 1990. (Note: The contract issue date is irrelevant). Vendors must abide by the following rules when asking for the penalty:

1. A payment must have been made on which the vendor believes he/she should have been paid PPA interest.

2. The vendor must ask for the interest and the OMB penalty in writing within 40 days of the date on the check. Use the postmark on the letter to determine whether the request falls within the 40 days.

3. The vendor must reference a specific invoice on which he/she believes the interest is due and must attach a copy of the invoice.

K. Vendor Pay Tasks When the Request is Received

1. Recompute the due date on the invoice the vendor submits.

a. If the vendor is wrong and interest was not owed, write a letter (use a pre-printed fill-in-the-blanks form letter or a computer-generated letter) to the vendor explaining how the due date was calculated and why he/she is not owed interest.

b. If the vendor is correct and interest should have been paid:

(1) Determine how much interest should have been paid at the time the payment was made.

(2) Compute interest on that amount from the day after payment was made through the date you expect to issue the interest/penalty payment. Use the interest rate in effect on the day after the original payment was made.

(3) If the computed amount is \$25 or more (minimum penalty) but less than \$5,000 (maximum penalty), the OMB penalty is the same amount as the interest computed in (b) above because the OMB penalty is 100% of the interest owed.

2. First example:

a. The amount that should have been added to the payment at the time it was made is \$30.00.

b. \$5.00 Interest has accrued on the \$30 since the payment was made. The total interest due is \$35.00. The OMB penalty is also \$35.00. Make a payment for \$70.00 to the vendor.

3. Second example:

a. The amount that should have been added to the payment at the time it was made is \$10.00.

b. \$1.25 Interest has accrued on the \$10.00 Since the payment was made-- total interest due is \$11.25. The minimum OMB penalty of \$25.00 is due. Make a payment for \$38.25.

4. Third example:

a. The interest amount that should have been paid at the time the payment was made is \$5,000.

b. The interest that has accrued on that amount since the payment was made is \$350.00. Total interest due is \$5,350.00. The maximum OMB penalty of \$5,000.00 is due. Make a payment for \$10,350.00. The number and dollar amount paid for OMB penalties are reported separately on the PPA report.

L. Delivery Versus Acceptance

Delivery and acceptance do not mean the same thing and cannot be used interchangeably.

1. Delivery of goods means the vendor deposited the shipment where he/she was told to do so in the contract. Acceptance of the goods occurs when an authorized U.S. Government representative checks the goods against the contract specifications and says they meet those specifications. Delivery of services occurs on the date the vendor finishes performing the services. Acceptance of the services occurs when an authorized U.S. Government

representative inspects the services and says they meet contract specifications. Delivery and acceptance may occur on the same day but usually, acceptance is a few days after delivery.

2. An authorized U.S. Government representative who is a contract employee because the organization has been "contracted out" can be named in a contract to accept goods or services for the U.S. Government. Logistics regulations direct receiving activities to complete their inspection and acceptance duties, complete any necessary paperwork, and get the documents to the designated payment office within five workdays after delivery or service completion. However, from a vendor pay perspective, receiving reports are "late" for charge back purposes if they reach the vendor pay office after COB on the day that is one-half of the payment period. (For example, on a 30-day payment period, the receiving report is late if it arrives at the vendor pay office on or after the 16th day. Of course, vendor pay personnel must try to schedule the payment on the correct payment due date even though the receiving activity got the receiving report to them late, but if they cannot and an interest is due on the payment, the interest amount is charged to the administration and operational funds of the receiving activity.)

M. Systems Transmission of Information versus Hard-copy Supporting Documents

1. The Department of Defense's (DoD) goal is to automate the complete ordering process. Eventually, a person will key into a system what he/she wants to buy and send it via interfaces to the funding activity. They will enter information that funds are available and will commit the funds and transmit the information on to the contracting office. Procurement personnel will issue the order and send the information to the paying office and to the receiving activity. The information will be used to establish the official obligation. When the receiving activity receives and accepts the goods or services, they will transmit the information to the contracting office and to the vendor pay office. Vendor pay personnel will enter the invoice into the system (some large businesses are developing the ability to send their invoices electronically) and send the information to the paying office. The paying office will issue an EFT payment to the vendor and will forward the information to the accounting activity, the vendor pay office, and the contracting office to close the procurement. All of this will take place without any pieces of paper being exchanged.

2. Most contracting offices are automated and can interface with the vendor pay office. Many vendor pay offices can now send information to the paying office, who can interface with the accounting system.

3. Going from working with pieces of paper to working with systems is a major change for most vendor pay office personnel. As we phase the ultimate system in, vendor pay personnel must begin to rely on information rather than on the documents themselves. The preferred method of getting procurement, receiving, and invoice information is through DA system transmission rather than through hard copy documents. Electronic signatures or passwords are used to authenticate transmissions. If information is received electronically, it is not necessary to print out a hard copy to put into a paper file. Vendor pay personnel may accept FAX transmissions of any necessary supporting documents. Where a signed piece of paper is still

required (for example, procurement documents and receiving reports), the signed paper may be kept in the office of origin and not sent to the vendor pay office.

4. There are only two documents which must be sent to the Federal Records Center as part of original money account papers: the original invoice and the original payment voucher. If an invoice is not required to make payment, only the original (first) payment voucher is sent to the Federal Records Center. Procurement documents and receiving reports are retained in the paying office retained files. They are not sent to the Federal Records Center. Under systems, the original payment voucher is the first copy of the computer-generated SF 1034. If a FAX invoice or a system-to-system invoice is used, the copy sent to the Federal Records Center must be marked systems original.